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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/621,582	07/18/2003	Brian Edward Le Gette	GRAY006/01US	2123

22903 7590 10/27/2004

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EXAMINER
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LEV, BRUCE ALLEN

ART UNIT	PAPER NUMBER
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3634

DATE MAILED: 10/27/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/621,582

Applicant(s)

LE GETTE ET AL.

Examiner

Bruce A. Lev

Art Unit

3634

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 23 September 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 24-29 and 31-38 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 24-29 and 31-38 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

BRUCE A. LEV  
PRIMARY EXAMINER

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.

- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### *Response to Amendment*

***The amendment filed September 23, 2004 is objected*** to under 35 U.S.C. 132 because it introduces ***new matter*** into the disclosure. 35 U.S.C. 132 states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows: "***a second frame***". Which is not discussed in the Specification or shown in the drawings. Applicant is required to cancel the new matter in the reply to this Office Action.

### ***Double Patenting***

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

***Claims 24-29 and 31-38 are rejected*** under the judicially created doctrine of ***double patenting*** over the claims of U. S. Patent No.'s ***6,478,038*** and ***6,595,227*** since the claims, if allowed, would improperly extend the "right to exclude" already granted in the patent.

The subject matter claimed in the instant application is fully disclosed in the patent and is covered by the patent since the patent and the application are claiming common subject matter, as follows: An apparatus comprising a frame; a membrane; a collapsible frame; straps; a covering; a pillow; and tension and extension members.

Furthermore, there is no apparent reason why applicant was prevented from presenting claims corresponding to those of the instant application during prosecution of the application which matured into a patent. See *In re Schneller*, 397 F.2d 350, 158 USPQ 210 (CCPA 1968). See also MPEP § 804.

Claims 24-38 are provisionally rejected under the judicially created doctrine of double patenting over the claims of copending Application No. 2003/0222484. This is a provisional double patenting rejection since the conflicting claims have not yet been patented.

The subject matter claimed in the instant application is fully disclosed in the referenced copending application and would be covered by any patent granted on that copending application since the referenced copending application and the instant application are claiming common subject matter, as follows: An apparatus comprising a frame; a membrane; a collapsible frame; straps; a covering; a pillow; and tension and extension members.

Furthermore, there is no apparent reason why applicant would be prevented from presenting claims corresponding to those of the instant application in the other copending application. See *In re Schneller*, 397 F.2d 350, 158 USPQ 210 (CCPA 1968). See also MPEP § 804.

***Claim Rejections - 35 USC § 102***

***Claims 25, 26, 29, 36, and 37 are rejected*** under 35 U.S.C. ***102(b)*** as being anticipated by ***Kellogg et al 5,992,045***.

***Kellogg et al set forth*** an apparatus (best illustrated in Figures 4 and 5) comprising a membrane 30; a flexible, twistable frame member 20, a tension member and an extension member (inclusive of members 50 and 60); coupling members; and the method of using.

***Claim 25 is rejected*** under 35 U.S.C. ***102(b)*** as being anticipated by ***Wang 5,632,318***.

***Wang sets forth*** an apparatus comprising a frame; a membrane; a collapsible frame member 20; straps (inclusive of members 26 and 30); and a covering 32.

***Claim Rejections - 35 USC § 103***

***Claim 24 is rejected*** under 35 U.S.C. ***103(a)*** as being unpatentable over ***Kellogg in view of Wang***.

***Kellogg sets forth*** the apparatus, as advanced above, except for the covering coupled to the frame and used for covering the membrane. However ***Wang teaches*** the use of a covering (inclusive of members 32) used for covering a membrane. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the apparatus of Kellogg by incorporating a covering, as

taught by Wang, in order to provide a convenient means to cover and store the apparatus.

**Claims 27, 28, 31, 32-36, and 38 are rejected** under 35 U.S.C. **103(a)** as being unpatentable over **Kellogg in view of the European Patent of Paroussiadis 202,862**.

**Kellogg sets forth** the apparatus, as advanced above, except for the pillow coupled thereto. However **Paroussiadis teaches** the use of a pillow coupled to an apparatus including a frame and membrane. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the apparatus of Kellogg by incorporating a pillow, as taught by Paroussiadis, in order to provide head supporting means to a user.

### **Response to Amendment**

Applicant's remarks filed September 23, 2004 have been fully considered but they are not deemed to be persuasive.

As concerns remarks pertaining to the reference of **Kellogg**, the examiner takes the position that the web is stretched over the frame. If it was not, then the mesh would be flimsy and folds would form. Further, the examiner reiterates the position that the tension member and the extension member can be viewed as inclusive of members 50 and 60 which could be, and is, used to maintain the orientation of the apparatus.

As concerns remarks pertaining to the reference of **Wang**, the examiner takes the position that the frame member can be viewed as curved since. For one, the frame is in a circular configuration, and two, that when lying on a windshield of a car, it is in a

(slightly) curved configuration since the windshield (of most vehicles) is also in a slightly curved shape.

As concerns remarks pertaining to the a "second frame", the examiner reiterates the position that a "second" frame is not specifically discussed in the Specification nor shown in the drawings. Therefore, this is considered "new matter" and thus becomes a moot point.

### ***Conclusion***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office Action.

**THIS ACTION IS MADE FINAL.** See M.P.E.P. § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 C.F.R. § 1.136(a).

A SHORTENED STATUTORY PERIOD FOR RESPONSE TO THIS FINAL ACTION IS SET TO EXPIRE THREE MONTHS FROM THE DATE OF THIS ACTION. IN THE EVENT A FIRST RESPONSE IS FILED WITHIN TWO MONTHS OF THE MAILING DATE OF THIS FINAL ACTION AND THE ADVISORY ACTION IS NOT MAILED UNTIL AFTER THE END OF THE THREE-MONTH SHORTENED STATUTORY PERIOD, THEN THE SHORTENED STATUTORY PERIOD WILL EXPIRE ON THE DATE THE ADVISORY ACTION IS MAILED, AND ANY EXTENSION FEE PURSUANT TO 37 C.F.R. § 1.136(a) WILL BE CALCULATED FROM THE MAILING DATE OF THE ADVISORY ACTION. IN NO EVENT WILL THE STATUTORY PERIOD FOR RESPONSE EXPIRE LATER THAN SIX MONTHS FROM THE DATE OF THIS FINAL ACTION.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bruce A. Lev whose telephone number is (703) 308-7470.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-2168.

10/19/2004

A handwritten signature in black ink, appearing to read 'B. Lev', with a large, stylized loop at the beginning and a horizontal stroke extending to the right.

**Bruce A. Lev  
Primary Examiner  
Group 3600**